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Practice Before The Interstate Commerce Commission
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WASHINGTON, D. C. 20004

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April 15, 1980

Registered Practitioners

PAULINE E. MYERS
MARK D. RUSSELL

11674 ✓

RECORDATION NO. Filed 1425

APR 15 1980 - 1 05 PM

INTERSTATE COMMERCE COMMISSION

0-106A070

APR 15 1980

Date 50.00

ICS Washington, D. C.

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

In Re: Agreement For Use Of Rail Cars Between
GWI Rail Management Corp. And Genesee
And Wyoming Railroad Company

Dear Mrs. Mergenovich:

Attached hereto is an original and two copies of the above
noted Agreement for Recordation with the Interstate Commerce
Commission.

Also attached is my check No. 2302 in the amount of \$50.00
to cover this Recordation.

Attached is a copy for my files of such Recordation.

Yours very truly,

Pauline E. Myers
Pauline E. Myers

PEM/slt

Attachments

RECEIVED
APR 15 12 59 PM '80
I.C.C.
FEE OPERATION BR.

Pauline E. Myers
Agatha L. Mergenovich

Interstate Commerce Commission
Washington, D.C. 20423

4/15/80

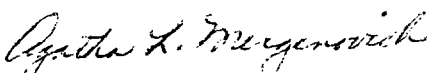
OFFICE OF THE SECRETARY

Pauline E. Myers
P.E. Myers & Associates
Suite 348, Pennsylvania Building
Penn.Ave. at 13th Street, N.W.
Washington, D.C. 20004

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/15/80 at 1:05pm, and assigned re-recording number(s). **11674**

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

AGREEMENT

APR 15 1980 - 1 05 PM

APR 15 1980 - 1 05 PM
INTERSTATE COMMERCE COMMISSION
INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, made as of this 11th day of December, 1979, between GWI RAIL MANAGEMENT CORP., with offices at 3846 Retsof Road, Retsof, New York ("GWIRM"), as agent for certain principal owners, and GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation ("GWRR"), with offices at 3846 Retsof Road, Retsof, New York 14539.

1. Scope of Agreement.

A. GWIRM as agent for certain principal owners, and GWRR agree that GWIRM shall deliver to GWRR for GWRR's use a maximum of 10 covered hopper railroad cars as set forth in any schedule or schedules executed by the parties concurrently or subsequently with this Agreement and made a part hereof. The word "Schedule" as used herein includes any such schedule or schedules executed herewith. The Schedule shall at all times describe the railcar equipment by appropriate serial number and identify the name of each car owner. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that the principal owners set forth on the Schedule shall at all times be and remain the owners of the Cars and that GWIRM shall be their agent. GWIRM acts or will act as agent of the owners by virtue of certain management agreements between GWIRM and each individual owner of the Cars. All actions undertaken by GWIRM under this Agreement shall, unless the context otherwise requires, be deemed to be taken as agent for each of the individual owners set forth on the Schedule. GWRR agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will execute such documents, at the request of GWIRM or the owners, and take such action as it deems necessary to accomplish or evidence this intent.

GWIRM, as agent for the owners, and GWRR agree that, as between themselves, GWRR shall not be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes.

D. It is the intent of the parties that GWIRM, as agent, shall receive an amount equal to all the per diem payments, mileage payments and any other payments however designated earned by the Cars (all of which are hereinafter collectively referred to as "payments" or "car hire payments") and GWRR shall have the availability and use of the Cars in its present transportation operation and in any expansion of such service without payment of any other charge to GWIRM.

2. Term.

This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. Subject to any termination rights hereinafter contained, this Agreement shall commence upon the delivery of the first Car to GWRR as set forth in Section 3A hereof and shall terminate on December 31, 1984.

3. Supply Provisions.

A. GWIRM, on behalf of the owners, will inspect each of the Cars tendered by the manufacturer for delivery and confirm to GWRR in writing that such inspection has been made and that the Cars conform to the specifications agreed to by GWRR as described in the attached Schedules. GWRR shall inspect the sample car and confirm in writing to GWIRM that it conforms to the specifications agreed to by GWRR and which are referenced in the attached Schedules. Upon such approval by GWRR and GWIRM's subsequent determination that each Car conforms to the specifications supplied by GWIRM and to all applicable governmental regulatory specifications, GWIRM will accept delivery thereof as agent of the owners at the manufacturer's facility and shall notify GWRR in writing of such acceptance. Each of the Cars shall be deemed delivered to GWRR upon such acceptance and notification by GWIRM and control of the Cars shall immediately pass from the owners to GWRR at such time.

B. If there is a surplus of Cars available for salt service, GWRR intends to the extent practicable to load the Cars prior to loading substantially similar covered hopper railroad cars which, subsequent to the date of this Agreement, have been leased or purchased by GWRR provided, however, that this shall in no event prevent or prohibit GWRR from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, it is expressly understood and acknowledged by the parties hereto that pursuant to a similar agreement dated as of November 7, 1978 between GWRR and States Marine Corporation (whose interest has since been assigned to BRAE Corporation) GWRR is obligated to give loading preference in a surplus situation to 425 covered hopper railroad cars which are managed under a 1978-1983 Covered Hopper Management Program. In addition, it is expressly understood that GWRR may, because of practical business considerations, give loading preference to cars now owned or leased by it (or to any substitutes for such cars). It is further understood that shipper cars at all times have loading priorities at the shipper's option.

4. Railroad Markings and Record Keeping.

A. GWIRM, as agent, and GWRR agree that on or before delivery of any Cars to GWRR, said Cars will be lettered with the railroad markings of GWRR and may also be marked with the name and/or other insignia used by GWRR, all at no cost to GWRR. GWIRM will insure that such name and/or insignia comply with all applicable regulations.

B. At no cost to GWRR, GWIRM, as agent, shall during the term of this Agreement prepare for GWRR's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate Association of American Railroads ("AAR") documents (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register (UMLER); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or other regulatory agencies.

5. Maintenance, Taxes and Insurance.

A. Except as otherwise provided herein and excluding the operating cost of GWRR as would be incurred whether or not this Agreement were in effect, GWIRM will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during the term of this Agreement, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of GWRR while a Car was in the physical possession of GWRR. GWRR hereby transfers and assigns to GWIRM for and during the term hereof all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by GWIRM at its sole expense and GWRR shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to GWIRM for the benefit of the individual owner.

B. Except as provided above, GWIRM shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. At GWIRM's expense, GWRR shall perform any necessary maintenance and repairs to Cars on GWRR's railroad tracks as may be reasonably requested by GWIRM. GWIRM shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term hereof.

GWRR may make running repairs to facilitate continued immediate use of a Car and bill GWIRM for such repairs. All bills for repairs by GWRR are payable upon receipt by GWIRM of an invoice.

C. GWIRM agrees to reimburse GWRR upon demand for all taxes (including but not limited to sale or use taxes imposed on the mileage charges, payments hereunder and/or car hire revenues), assessments and other governmental charges of whatsoever kind or character paid by GWRR relating to each Car and on the lease, delivery or operation thereof of which may remain unpaid as of the date of delivery of such Car to GWRR or which may be accrued, levied, assessed or imposed during the term hereof, except taxes, however designated, imposed on income of GWRR. Moreover, GWIRM agrees to indemnify and hold harmless GWRR from any and all such tax, assessment or charge liability and from any costs, penalties or expenses, including legal fees, relating thereto. GWIRM and GWRR will comply with all state and local laws requiring the filing of ad valorem tax returns on the cars.

6. Consideration.

A. In consideration for its performance of its obligations hereunder, GWIRM shall be entitled for the account of the owners to a sum equal to all car hire payments made to GWRR on account of the Cars. In addition, GWIRM shall be entitled to a sum equal to all monies, if any, earned by the Cars prior to their initial loading.

B. GWRR shall pay or cause to be paid to GWIRM, or its designee or agent, a sum equal to all revenues received with regard to the Cars, including but not limited to payments described in Section 6A, 6C and 7B, as soon as possible after such payments are actually received by GWRR.

C. In the event that one or more of the cars is bad ordered, damaged, destroyed or otherwise out-of-service for reasons other than a lack of demand or a use for the cars and therefore not eligible to receive per diem or mileage revenues or other rental income, GWRR shall pay or cause to be paid to GWIRM or its designee or agent an amount sufficient to assure that the gross revenues received hereunder for all the Cars collectively shall not be less than \$5,670.00 for any given calendar month.

D. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement, Code of Car Hire Rules and

Interpretations - Freight and the appropriate amount due as a result thereof is received by GWIRM, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments as to such Car ceased.

E. GWIRM may, at its option and upon written notice to GWRR, terminate this Agreement as to such Cars as GWIRM shall determine in the event that the utilization after December 31, 1980 of the Cars is less than 70 percent either (i) during any two consecutive quarters or (ii) on the average over any four consecutive calendar quarters. For the purposes of this Agreement, utilization shall be determined by a fraction, the numerator of which is the sum of the aggregate number of days of each calendar quarter that car hire payments are earned by GWRR on each car, commencing from the initial loading, and the denominator of which is the sum of the aggregate number of days in each calendar quarter that each car is subject to this Agreement, commencing from the initial loading (such term referred to as "utilization").

F. Upon mutual written consent of GWIRM and GWRR, this Agreement may be terminated as to any Car at any time.

G. If at any time during the term of this Agreement, any management agreement (as referenced in Section 1 above) between GWIRM and any individual owner is terminated, then this Agreement shall be deemed to be terminated as to the Cars of such owner as of date of termination of the owner's Management Agreement.

H. In the event that GWRR shall give written notice to GWIRM, or its designee or agent, that any alterations, modifications, improvements or additions to the Cars, costing \$200 or more per Car, or any one of them, are required by AAR, the Department of Transportation or any other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements, then GWIRM shall have thirty (30) days from the receipt of said notice to terminate this Agreement as to one or more of the Cars. Such termination shall be made by written notice to GWRR within said thirty (30) day period. If GWIRM does not so terminate, then GWIRM shall promptly commence and diligently complete such alteration, modification, improvement or addition or GWRR may immediately terminate this Agreement as to such Cars.

7. Possession and Use.

A. So long as GWRR shall not be in default under this Agreement, GWRR shall be entitled to the possession and use of the Cars in accordance with and subject to the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business.

B. If, in the opinion of GWIRM and GWRR, it may be possible to achieve a higher utilization of the cars without seriously impeding the ability of the GWRR to perform its carrier functions, then GWIRM may direct GWRR to perform its carrier functions, then GWIRM may direct GWRR to assign that number of Cars designated by GWIRM to other railroads subject to recall. In this event, an amount equal to all car hire payments earned with regard to the assigned cars shall be paid to GWIRM.

C. GWRR will not directly or indirectly create, incur, or cause to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule thereto. GWRR will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest or claim if the same shall arise at any time.

D. GWRR shall use its best efforts to provide that the Cars will not be used predominantly outside the United States during 1979 or any subsequent calendar year within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. It is expressly understood that GWRR shall have no other obligation in this regard.

8. Default of GWRR

A. The occurrence of any of the following events shall be an event of default of GWRR:

(i) The nonpayment by GWRR of any sum required herein to be paid by GWRR within twenty (20) days after the date any such payment is due.

(ii) The breach by GWRR of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days after receipt of written notice thereof.

(iii) Any act of insolvency by GWRR, or the filing by GWRR of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other similar law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against GWRR that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of GWRR, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any material portion of GWRR's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not discharged within sixty (60) days.

B. Upon the occurrence of any event of default, GWIRM at its option, may

(i) Proceed by any lawful means to enforce performance by GWRR of this Agreement or to recover damages for a breach thereof (and GWRR agrees to bear GWIRM's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to GWRR, terminate GWRR's right of possession and use of the Cars, whereupon all right and interest of GWRR in the CARS shall terminate; and thereupon GWIRM may enter upon any premises where the CARS may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of GWRR. GWIRM shall nevertheless have the right to recover from GWRR any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

9. Default of GWIRM

A. The occurrence of any of the following events shall be an event of default of GWIRM:

(i) The nonpayment by GWIRM of any sum required herein to be paid by GWIRM within twenty (20) days after the date any such payment is due.

(ii) The breach by GWIRM of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days of receipt of written notice thereof.

(iii) Any act of insolvency by GWIRM or the filing by GWIRM of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other similar law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against GWIRM that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of GWIRM, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subject of any material portion of GWIRM's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not discharged within sixty (60) days.

B. Upon the occurrence of any event of default, GWRR, at its option, may

(i) Proceed by any lawful means to enforce performance of GWIRM of this Agreement and to recover damages for a breach hereof (and GWIRM agrees to bear GWRR's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and, by notice to GWIRM, require GWIRM to take possession of any Cars situated on GWRR's line.

C. The termination of any management agreement between GWIRM and any owner of any Cars for any reason shall be an event of default of GWIRM. In such event, GWRR may (i) terminate this Agreement as to any Cars covered by such terminated management agreement, and (ii) by notice to GWIRM or the owner, require GWIRM or the owner to take possession of any such Cars situated on GWRR's line, and (iii), except as to terminations of the management agreement pursuant to Section 13 or 14 thereof, proceed by any lawful means to recover damages for breach.

10. Rights of Termination

At the expiration or termination of this Agreement as to any Cars, GWRR will surrender possession of such Cars to GWIRM by delivering the same to GWIRM at GWIRM's expense. Upon termination, GWRR's railroad markings shall be removed from the Cars and there shall be placed thereon such markings as may be designated by GWIRM at the option of GWIRM and at GWIRM's cost, either (1) by GWRR upon return of such Cars to GWRR's railroad line or (2) by another railroad line which has physical possession of the car at the time of or subsequent to termination as to such Car. If such Cars are not on the railroad line of GWRR upon termination, any cost of assembling, delivering, storing, and transporting such Cars to GWRR's railroad line or the railroad line of a subsequent lessee shall be borne by GWIRM. If such Cars are on the railroad line of GWRR upon termination, GWIRM shall be liable to GWRR for storage costs until such Cars are removed from GWRR tracks.

11. Indemnities

GWIRM will defend, indemnify and hold GWRR harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while GWRR has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against GWRR with respect to the Cars (other than loss or damage to the Cars as in (1)), including without limitation that arising out of the construction, purchase and delivery of the Cars to

GWRR's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by GWIRM or GWRR).

12. Representations, Warranties and Covenants of GWRR

GWRR represents, warrants and covenants that GWRR is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has taken all of the corporate action necessary to enter into and perform its obligations under this Agreement.

13. Representations, Warranties and Covenants of GWIRM

GWIRM represents, warrants and covenants that GWIRM has received and reviewed the management agreement signed by each of the owners set forth on Schedule A; that to the best of its knowledge any of such owners as are required to obtain corporate authorization to enter into such management agreement have taken all of the action necessary to obtain and have obtained such authorization, and that nothing has come to the attention of GWIRM which would indicate that any owner was not qualified to enter into such management agreement or that GWIRM's authority to act on any such owner's behalf in entering into this Agreement has been limited in any way except as contemplated by such management agreement.

14. Inspection

GWIRM shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure GWRR's compliance with its obligations hereunder. GWRR shall immediately notify GWIRM of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to GWRR's investigation of the accident. GWRR shall also notify GWIRM in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. GWRR will execute any authorization necessary for GWIRM to examine the Cars.

15. Agency of GWIRM

GWRR understands that GWIRM is acting as agent for the various car owners as individuals or individual entities, that GWIRM will look to such owners for the payment of all amounts due to GWRR under this Agreement and that GWIRM will have no obligation to pay such amounts except to the extent that such owners have made such sums available to GWIRM. This Section shall in no way limit GWRR's ability under Section 9 to terminate this Agreement.

16. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except as provided in Section 7B. hereof, GWRR may not without the prior consent of GWIRM assign this Agreement or any of its rights and obligations hereunder and any purported assignment in violation hereof shall be void. GWIRM may not without the prior written consent of GWRR assign its agency rights and obligations under this Agreement to any party and any assignment in violation hereof shall be void.

B. It is expressly understood and agreed by GWRR, GWIRM, and the owners that this Agreement constitutes an agreement as to use of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of car hire payments, nothing herein shall be construed as conveying to GWRR any right, title or interest in the Cars except as GWRR's rights are specifically provided herein.

C. No failure or delay by GWIRM shall constitute a waiver or otherwise affect or impair any right, power or remedy available to GWIRM nor shall any waiver or indulgence by GWIRM or any partial or single exercise of any right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy.

D. This Agreement shall be governed by and construed according to the laws of the State of New York.

E. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed
this Agreement as of the date first above written.

GENESEE AND WYOMING RAILROAD COMPANY

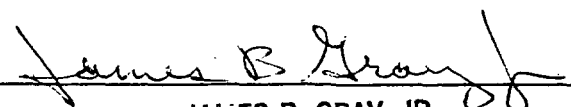
By: Gerald E. Johnson
President

GWJ RAIL MANAGEMENT CORP.

By: MM Buller
President


STATE OF NEW YORK)
COUNTY OF Monroe) SS:
City of Rochester)

On this 8 day of January, 1980, before me personally appeared Gerald E. Johnson, to me personally known, who being by me duly sworn, says that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


JAMES B. GRAY, JR.
Notary Public, State of NY, Monroe Co.
Commission expires March 30, 1981

STATE OF NEW YORK)
COUNTY OF Monroe) SS:
City of Rochester)

On this 8 day of January, 1980, before me personally appeared Mortimer B. Fuller III, to me personally known, who being by me duly sworn, says that he is the President of GWI RAIL MANAGEMENT CORP., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


JAMES B. GRAY, JR.
Notary Public, State of NY, Monroe Co.
Commission expires March 30, 1981

SCHEDULE

The following indicate the owners, by Car Serial Number, of ten 100-Ton Covered Hopper Railroad Cars (4750 Cu. Ft. Capacity), manufactured by Pullman Standard, a division of Pullman Incorporated, which Cars are subject to a certain Agreement dated as of December 11, 1979, between GWI Rail Management Corporation and Genesee and Wyoming Railroad Company.

<u>OWNER</u>	<u>SERIAL NUMBER</u>
Mortimer B. Fuller, Jr.	GNWR 510008
William B. Putney, IV	GNWR 510003 510005 510006
GWJ Leasing Corporation	GNWR 510001 510002 510004 510007 510009 510010

GWJ RAIL MANAGEMENT CORPORATION

GENESEE AND WYOMING RAILROAD
COMPANY

By: *Mortimer B. Fuller, III*, President
Mortimer B. Fuller, III,
President

By: *Gerald E. Johnson*, PRESIDENT
Gerald E. Johnson,
President